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12/16/02

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Meyers)
APPLICATION NO.: 09/652,927) Examiner: Lugo
FILED: October 31, 2000) Art Unit: 3677
FOR: TEE BAFFLE FOR USE AT INLET)
OR OUTLET OF SEPTIC AND)
OTHER ON-SITE WASTE)
DISPOSAL SYSTEMS)

RECEIVED
DEC 05 2002
GROUP 3600

AFFIDAVIT OF THEODORE W. MEYERS UNDER 37 C.F.R. §1.132

I, Theodore W. Meyers, hereby swear as follows:

1. I am the founder and President of Tuf-Tite, Inc. ("Tuf-Tite"), the Assignee of United States Patent Application No. 09/652,927, entitled TEE BAFFLE FOR USE AT INLET OR OUTLET OF SEPTIC AND OTHER ON-SITE WASTE DISPOSAL SYSTEMS, and I am also the sole inventor thereof.

2. I have reviewed the Office Actions mailed on November 27, 2001 and July 2, 2002, and the prior art references on which the rejections under 35 U.S.C. § 103(a) are based.

3. The purpose of this Affidavit is to submit evidence of secondary considerations of non-obviousness, including commercial success and copying by others, in order to rebut the obviousness rejections in the Office Action mailed July 2, 2002.

4. I am familiar with the art of design and manufacture of septic tanks and other on-site waste disposal systems, as well as design and manufacture of the various components used in conjunction with such waste disposal systems, including injection-molded plastic components. I am the inventor of thirteen issued United States patents on products in this field.

5. In particular, I am familiar with older and newer versions of commercially-available injection-molded plastic tees utilized at the inlet and/or outlet of septic and other on-site waste

disposal systems to direct the flow of unfiltered and filtered effluent, and with the filter elements sometimes used in conjunction with such tees. I am also familiar with the labor and time involved in the actual field installation of these types of tees.

6. Tuf-Tite is a manufacturer and supplier of various products in the septic tank and other on-site waste disposal equipment field. Tuf-Tite has introduced numerous new products in the septic tank/on-site waste disposal area over the years. Thus, I am familiar with the history, sales growth, and performance of new products in this field. With particular relevance here, soon after introducing the tees made in accordance with the claims of the subject patent application to customers, I immediately recognized a dramatic volume of sales of such tees, and much more than would be expected based on my long experience in this field.

7. Tuf-Tite sells tees made in accordance with the claims of the subject patent application, sold under the trade name "T-BAFFLE," and under Tuf-Tite's product number "TB-4." Attached as Appendix 1 to this Affidavit is a three page sales report entitled "Sales History for TB-4, T-BAFFLE FOR SEPTIC TANK INLET AND OUTLET," which is a true and accurate thirty-six month record of the sales volume for the T-BAFFLE tees sold by Tuf-Tite covering the time period from October, 1999, a date before such sales commenced, through September, 2002 (with the introduction of the T-BAFFLE tees being in May, 2000). During this time period, Tuf-Tite sold a total of 122,527 T-BAFFLE tees, for a total dollar sales of \$359,746.00.

8. Based on my some 20 years of inventive, research, development, sales, manufacturing and marketing experience in the on-site waste disposal system component business, the sales figures shown in Appendix A reflect a substantial commercial success for the T-BAFFLE tees. Further, I consider all the commercial success of Tuf-Tite's T-BAFFLE tees to be attributable to

the claimed features of the subject patent application, as I know of no other reasons that would have caused such a high volume of sales.

9. Further, this commercial success was realized notwithstanding the fact that use of the T-BAFFLE tees is subject to regulatory approval in many states, and with approvals still pending in certain states. I therefore expect the sales of Tuf-Tite's T-BAFFLE tees to continue to improve as Tuf-Tite obtains regulatory approval for use (i.e., permission to use the tees, as opposed to mandatory use) of the tees in certain states where approval is required, such as in Arkansas and Indiana.

10. Among the significant sales described above, between June 19, 2000 and December 20, 2000, a Tuf-Tite competitor, Zabel Environmental Technology, a/k/a Zabel, Inc., ("Zabel"), purchased 14,040 of the "T-BAFFLE" tees from Tuf-Tite, for a total of \$44,928.00. (See Appendix 2, which is a true and accurate report of all T-BAFFLE tees that Tuf-Tite provided to Zabel) Prior to June 19, 2000, it is my understanding that Zabel manufactured no such tee product, and particularly, Zabel did not manufacture any that was a universal tee product (like the Tuf-Tite TB-4 product), which could accept, and thereby be used with, multiple different standard sizes of pipe product, including Schedule 40 pipe and SDR 35 pipe. Notwithstanding the fact that Zabel is a Tuf-Tite competitor, it is my understanding that Zabel bought the Tuf-Tite TB-4 tees for its own resale since there was no other such product on the market, and had not previously been any, and Zabel wished to remain competitive with Tuf-Tite's substantial sales in that product area.

11. On both May 17, 2000 and May 18, 2001, Tuf-Tite sent Zabel a free sample of the T-BAFFLE tee. Tuf-Tite sent Zabel the May 18, 2001 sample in an unsuccessful effort to re-gain Zabel's business with respect to the T-BAFFLE tee, as by then Zabel had stopped buying the

Tuf-Tite TB-4 tees. In fact, as shown in Appendix 2, since December 20, 2000, Zabel has not purchased a single T-BAFFLE tee from Tuf-Tite, despite continuing to purchase numerous other Tuf-Tite products related to septic tanks and other on-site waste systems. (See Appendix 3, which is a collection of true and accurate sales histories reflecting purchases by Zabel of various other Tuf-Tite products prior to and since December 20, 2000)

12. Sometime in the summer of 2001, not long after Zabel stopped purchasing T-BAFFLE tees from Tuf-Tite, Zabel began advertising and selling its own universal tee for septic and other on-site waste disposal systems, under the trade name "Versa-Tee™". (See Appendix 4, which is a true and accurate copy of an excerpt from Zabel's Summer 2001 industry publication "The Zabel Zone®," including an article entitled "Filter Tee." See also Appendix 5, which is a true and accurate copy of an advertising insert showing the Zabel "Versa-Tee™" product.)

13. As the Zabel trade name and marketing materials suggest, the "Versa-Tee™" product is offered as a versatile product that is adapted to accept both Schedule 40 as well as SDR-35 pipe in its inlet/outlet port.

14. Specifically, the marketing material shown in Appendix 4 states: "Our new tee baffle also accepts both thin-wall pipe and Schedule 40 four-inch pipe." The material shown in Appendix 5 states:

Versa-Tee™

Versatile Design

- outlet accept SDR 35 or SCH 40

15. I have also personally inspected the "Versa-Tee™" product and from my inspection I can confirm that not only is the product adapted to accept both Schedule 40 and SDR 35 pipe,

but also, the product is made of a thin-walled, generally cylindrical main body portion, i.e. substantially thinner than, on the order of about half the thickness of, Schedule 40 pipe, which is the thickness typically employed in the body portion of conventional tees having hubs sized to receive Schedule 40-sized pipe.

16. According to independent claims 1, 15, and 23 of the subject patent application assigned to Tuf-Tite, the claimed tee is provided with an inlet/outlet port in communication with the tubular opening of the tee, the inlet/outlet port having an inlet/outlet hub at an open end thereof, the inlet/outlet hub having a diameter sized so as to receive a pipe of a first outer diameter and being adaptable to receive a pipe of a second outside diameter, and the diameter of the inlet/outlet hub being greater than the diameter of the elongated main body portion. Claim 15 further claims a wall thickness between 0.075" and 0.100" over a substantial portion of the elongated main body portion of the tee baffle, which is substantially thinner than Schedule 40-sized pipe thickness, the thickness typically employed in the body portion of conventional tees having hubs sized to receive Schedule 40-sized pipe. These claimed features are understood to be why Zabel bought 14,040 of Tuf-Tite's TB-4 tees, and then later came out with the Zabel "Versa-Tee™," as no other such tee was available in the marketplace (or ever even known to me).

17. As can be readily seen from the advertisement of the Zabel "Versa-Tee™" product, Zabel's tee is similarly provided with an inlet/outlet port in communication with the tubular opening of the tee, the inlet/outlet port has an inlet/outlet hub at an open end thereof, the inlet/outlet port has a diameter that is sized to receive a pipe of a first outer diameter (i.e., Schedule 40 pipe), the inlet/outlet hub is adapted to also receive a pipe of a second outside diameter (i.e., SDR 35 pipe), and the diameter of the inlet/outlet hub is greater than the diameter

of the main body portion of the tee (as demonstrated by the fact that the portion of the inlet/outlet hub sized to receive SDR 35 pipe, i.e. the smallest diameter of that hub, is the same diameter of the uppermost hub of the tee, which is larger than the diameter of the main body portion of the tee). Furthermore, as I saw in my personal inspection of the Versa-Tee™ product, the generally cylindrical main body portion of the tee has a thin-walled construction, on the order of about half the thickness of Schedule 40-sized pipe. In my experience, one of ordinary skill in this art would not expect to find such a thin wall thickness in a tee, as conventional tees, unlike the tees claimed in the subject patent application for use at the inlet or outlet of septic and other on-site waste systems, are typically used in plumbing situations in which the tees must withstand high pressures, and hence, are formed of much thicker walls than the "T-BAFFLE" product.

18. As the attached sales histories demonstrate, Zabel has not purchased any of the "T-BAFFLE" tees from Tuf-Tite since December 20, 2000, seven months following Tuf-Tite's introduction into the market of the "T-BAFFLE" product.

19. The foregoing is real-world evidence of copying by Zabel. That copying, coupled with the large commercial success realized by Tuf-Tite on its "T-BAFFLE" tees, demonstrates the non-obviousness of the claimed subject matter of the present patent application.

20. The Tuf-Tite T-BAFFLE tees have been certified by the NSF Certification to Standard 46, governing effluent filters and housings.

21. I hereby affirm that all of the foregoing statements are true and accurate to the best of my knowledge and belief, that each of the documents appended hereto are true and accurate

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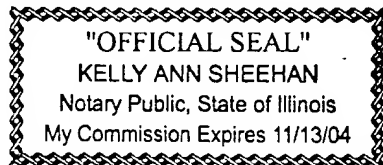
copies of what they purport to represent, and that I am aware any false statements may subject me to penalties for perjury and may jeopardize the validity of any patent(s) that may issue on the present application.

November 26 2002

Theodore W. Meyers
Theodore W. Meyers
Inventor & President,
Tuf-Tite, Inc.

Subscribed and sworn to before me on this 26th
day of November, 2002

Kelly A. Sheehan
(Notary Public)



Sales History for TB-4, T-Baffle for Septic Tank Inlet and Outlet

Pds Past	End Date	\$ Sales	% Prior	Qty Sls	% Prior	Period ASP
36	10/31/99	0	N/A	0	N/A	0.00
35	11/30/99	0	100	0	100	0.00
34	12/31/99	0	100	0	100	0.00
33	01/31/00	0	100	0	100	0.00
32	02/29/00	0	100	0	100	0.00
31	03/31/00	0	100	0	100	0.00
30	04/30/00	0	100	0	100	0.00
29	05/31/00	4,340	100	1,185	100	3.66
28	06/30/00	20,676	476	7,583	639	2.73
27	07/31/00	8,696	42	4,923	64	1.77
26	08/31/00	9,119	104	3,096	62	2.95
25	09/30/00	18,865	206	5,639	182	3.35
Totals (36-25)		61,696		22,426		2.75
Avg. of Pds (36-25)		5,141.33		1,868.83		

Sales History for TB-4, T-Baffle for Septic Tank Inlet and Outlet

Pds Past	End Date	\$ Sales	% Prior	Qty Sls	% Prior	Period ASP
24	10/31/00	4,041	21	2,602	21	1.55
23	11/30/00	19,951	493	5,981	229	3.34
22	12/29/00	21,561	108	6,907	115	3.12
21	01/31/01	10,763	49	4,145	60	2.60
20	02/28/01	3,199	29	1,477	35	2.17
19	03/30/01	8,027	250	2,601	176	3.09
18	04/30/01	8,841	110	3,025	116	2.92
17	05/31/01	15,113	170	5,695	188	2.65
16	06/29/01	12,506	82	3,634	63	3.44
15	07/31/01	11,742	93	3,895	107	3.01
14	08/31/01	9,008	76	3,729	95	2.42
13	09/28/01	11,406	126	3,373	90	3.38
Totals (24-13)		136,158		47,064		2.89
Avg. of Pds (24-13)		11,346.50		3,922.00		

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Sales History for TB-4, T-Baffle for Septic Tank Inlet and Outlet

Pds Past	End Date	\$ Sales	% Prior	Qty Sls	% Prior	Period ASP
12	10/31/01	12,460	109	3,198	109	3.90
11	11/30/01	10,321	82	3,225	100	3.20
10	12/31/01	10,920	105	3,216	99	3.40
9	01/31/02	13,428	122	4,277	132	3.14
8	02/28/02	9,270	69	3,330	77	2.78
7	03/29/02	9,970	107	2,975	89	3.35
6	04/30/02	14,465	145	4,820	162	3.00
5	05/31/02	16,747	115	5,926	122	2.83
4	06/28/02	14,104	84	4,522	76	3.12
3	07/31/02	19,657	139	6,556	144	3.00
2	08/30/02	16,132	82	5,885	89	2.74
1	09/30/02	14,418	89	5,107	86	2.82
Totals (12-1)		161,892		53,037		3.05
Avg. of Pds (12-1)		13,491.00		4,419.75		

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Page: 1

Date: 10/28/02 at 9:04 AM

Tuf-Tite Inc.
Item Sales Analysis Report
Current and History Files
Cust = ZIN1 Item = TB-4

Cust #	Invoice #	Inv Date	Slpr	U/M	Qty Ship - Trn
=====	=====	=====	=====	=====	=====
** Item # / Item ==> TB-4 / T-BAFFLE FOR SEPTIC TANK INLET AND					
ZIN1	66180	05/17/00	AD	EA	1.000
ZIN1	67390	06/19/00	AD	EA	2880.000
ZIN1	70508	09/19/00	AD	EA	2520.000
ZIN1	72240	11/03/00	AD	EA	2880.000
ZIN1	73287	12/20/00	AD	EA	5760.000
ZIN1	77015	05/18/01	AD	EA	1.000

** Subtotal **					14042.000
					=====
*** Total ***					14042.000

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Page: 1

Date: 10/28/02 at 9:02 AM

Tuf-Tite Inc.
Item Sales Analysis Report
Current and History Files
Cust = ZIN1 Item = SL-4

Cust #	Invoice #	Inv Date	Slpr	U/M	Qty Ship - Trn
=====	=====	=====	=====	=====	=====

** Item # / Item ==> SL-4 / 4" SPEED LEVELER					
ZIN1	62157	12/16/99	AD	EA	100.000
ZIN1	67897	07/05/00	AD	EA	500.000
ZIN1	73463	01/05/01	AD	EA	200.000
ZIN1	73805	01/24/01	AD	EA	500.000
ZIN1	76024	04/23/01	AD	EA	350.000
ZIN1	76527	05/07/01	AD	EA	250.000
ZIN1	76880	05/15/01	AD	EA	250.000
ZIN1	77758	06/11/01	AD	EA	500.000
ZIN1	79825	08/03/01	AD	EA	500.000
ZIN1	80435	08/20/01	AD	EA	500.000
ZIN1	82670	10/23/01	AD	EA	200.000
ZIN1	83577	11/15/01	AD	EA	500.000
ZIN1	85681	02/14/02	AD	EA	1000.000
ZIN1	87929	04/26/02	AD	EA	1000.000
ZIN1	90619	07/03/02	AD	EA	1000.000

** Subtotal **					7350.000
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*** Total ***					7350.000
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Page: 1

Date: 10/28/02 at 8:57 AM

Tuf-Tite Inc.
Item Sales Analysis Report
Current and History Files
Cust = ZIN1 Item = 6HD2

Cust #	Invoice #	Inv Date	Slpr	U/M	Qty Ship - Trn
=====	=====	=====	=====	=====	=====

** Item # / Item ==> 6HD2 / 6 HOLE DISTRIBUTION BOX

ZIN1	62157	12/16/99	AD	EA	12.000
ZIN1	64678	04/05/00	AD	EA	48.000
ZIN1	73578	01/12/01	AD	EA	48.000
ZIN1	75329	04/03/01	AD	EA	48.000
ZIN1	77563	06/05/01	AD	EA	24.000
ZIN1	78329	06/26/01	AD	EA	24.000
ZIN1	79367	07/23/01	AD	EA	36.000
ZIN1	79825	08/03/01	AD	EA	48.000
ZIN1	82670	10/23/01	AD	EA	24.000
ZIN1	82842	10/26/01	AD	EA	24.000
ZIN1	83602	11/15/01	AD	EA	48.000
ZIN1	83752	11/20/01	AD	EA	84.000
ZIN1	85681	02/14/02	AD	EA	48.000
ZIN1	85741	02/15/02	AD	EA	48.000
ZIN1	88902	05/21/02	AD	EA	48.000
ZIN1	89155	05/28/02	AD	EA	1.000
ZIN1	90619	07/03/02	AD	EA	100.000

** Subtotal **

713.000

*** Total ***

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713.000

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Page: 1

Date: 10/28/02 at 8:55 AM

Tuf-Tite Inc.
Item Sales Analysis Report
Current and History Files
Cust = ZIN1 Item = 4HD2

Cust #	Invoice #	Inv Date	Slpr	U/M	Qty Ship - Trn
=====	=====	=====	=====	=====	=====

** Item # / Item ==> 4HD2 / 4 HOLE DISTRIBUTION BOX

ZIN1	62157	12/16/99	AD	EA	12.000
ZIN1	64678	04/05/00	AD	EA	48.000
ZIN1	73029	12/05/00	AD	EA	48.000
ZIN1	73173	12/12/00	AD	EA	48.000
ZIN1	74357	02/26/01	AD	EA	48.000
ZIN1	75329	04/03/01	AD	EA	48.000
ZIN1	77563	06/05/01	AD	EA	24.000
ZIN1	77758	06/11/01	AD	EA	60.000
ZIN1	79367	07/23/01	AD	EA	48.000
ZIN1	79825	08/03/01	AD	EA	12.000
ZIN1	80888	08/31/01	AD	EA	100.000
ZIN1	82981	10/31/01	AD	EA	9.000
ZIN1	83752	11/20/01	AD	EA	48.000
ZIN1	85681	02/14/02	AD	EA	108.000
ZIN1	85741	02/15/02	AD	EA	108.000
ZIN1	90808	07/10/02	AD	EA	100.000

** Subtotal **

869.000

*** Total ***

869.000

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Page: 1

Date: 10/28/02 at 9:00 AM

Tuf-Tite Inc.
Item Sales Analysis Report
Current and History Files
Cust = ZIN1 Item = DB6

Cust #	Invoice #	Inv Date	Slpr	U/M	Qty Ship - Trn
=====	=====	=====	=====	=====	=====

** Item # / Item ==> DB6 / 6" DROP BOX

ZIN1	62157	12/16/99	AD	EA	12.000
ZIN1	64678	04/05/00	AD	EA	120.000
ZIN1	73173	12/12/00	AD	EA	120.000
ZIN1	75046	03/23/01	AD	EA	48.000
ZIN1	77563	06/05/01	AD	EA	48.000
ZIN1	77758	06/11/01	AD	EA	48.000
ZIN1	79825	08/03/01	AD	EA	48.000

** Subtotal **

444.000

*** Total ***

444.000

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Page: 1

Date: 10/28/02 at 8:58 AM

Tuf-Tite Inc.
Item Sales Analysis Report
Current and History Files
Cust = ZIN1 Item = 7HD2

Cust #	Invoice #	Inv Date	Slpr	U/M	Qty Ship - Trn
=====	=====	=====	=====	=====	=====

** Item # / Item ==> 7HD2 / 7 HOLE DISTRIBUTION BOX

ZIN1	62157	12/16/99	AD	EA	5.000
ZIN1	64678	04/05/00	AD	EA	100.000
ZIN1	83577	11/15/01	AD	EA	15.000
ZIN1	88197	05/02/02	AD	EA	15.000
ZIN1	89155	05/28/02	AD	EA	15.000
ZIN1	91372	07/23/02	AD	EA	100.000

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** Subtotal **					250.000
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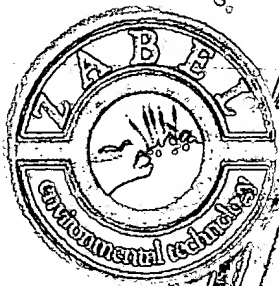
*** Total ***					250.000
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THE LABEL ZONE[®]

THE ONSITE WASTEWATER MAGAZINE

Summer 2001

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Protecting our Environment

Filter Tee

By Theo B. Terry, III, RS

Remember the scene from the movie, "Raiders of the Lost Ark", where Indiana Jones encounters the Arab swordsman in the marketplace? Jones has already made several escapes as he runs through the narrow alleyways, but screeches to a halt as the burly Arab comes into view, brandishing his scimitar with a flourish of fancy moves designed to intimidate Jones with his skill. The action stops as Jones watches his opponent's posturing, then resumes as he slings, pulls out his pistol, and dispatches his foe with one quick shot.

I love that scene! It reminds me of the posturing a couple of onsite companies have been making over the issue of solids leaving the septic tank when the filter is pulled for cleaning.

One company touts their superior design--the use of a ball as a shutoff device, which stops the flow of effluent from entering the tee from the bottom when the filter is pulled from the septic tank. But the problem is, this design in that situation then allows the scum layer to flow over the top of the tee and out to the drainfield. If the filter cartridge is not replaced, (as we all know is sometimes the case in "the real world"), overflow of the scum layer will continue, leading to premature failure of the drainfield.

Another company has come up with the concept of two effluent filters locked together. The idea for servicing the filters is that you turn and unlock the two filters, and initially pull only the innermost filter for cleaning. Then you are supposed to lock the two filters back together and pull both of them for cleaning.

Editors note:

Look for the new Zabel Filter Tee coming to a store near you later this summer.

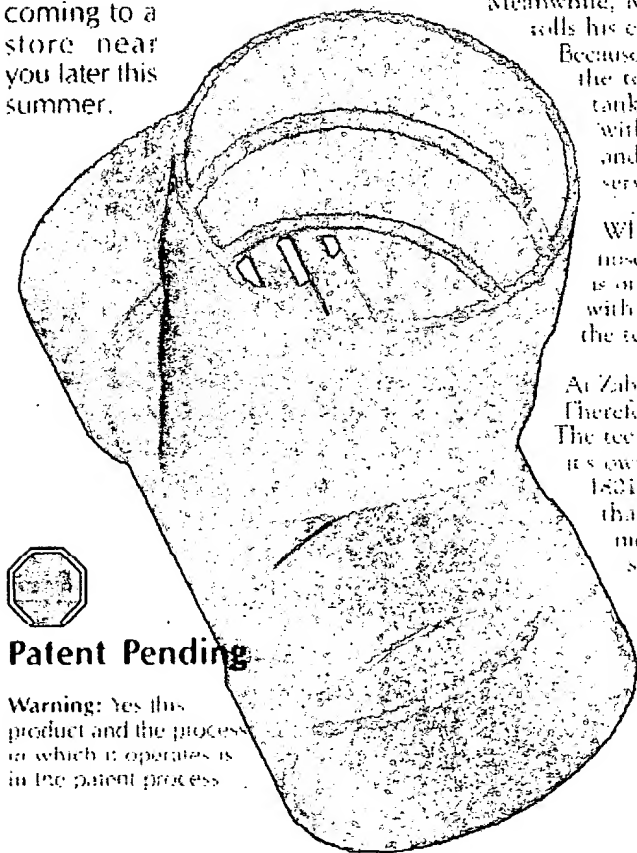
Meanwhile, Mr. Pumper, out on a service call, just shrugs his shoulders, rolls his eyes and drops in the hose from the truck to pump the tank.

Because, as we know, until he pumps the tank down to a level below the top of the outlet tee, he doesn't know which filter is in the tank. Most of the extended handles for effluent filters are made with a half-inch PVC tee and pipe. He doesn't know to twist and pull (or is it pull and twist?), he simply knows he needs to service the septic tank. His answer is simply to pump the tank.

What both of these companies have missed is as obvious as the nose on my face. The "problem" (and I say that loosely, since it is of little consequence to begin with), lies not with the filter, but with the tee baffle. The filter has done its job. It is now up to the tee baffle to perform.

At Zabel, we don't look to add bells and whistles to our line of products. Therefore, we've designed a **new tee baffle** for the onsite industry. The tee is designed specifically for use in a septic tank. It comes with its own built-in filter screen on the outlet side. Each time a Zabel 1821 filter is either removed or inserted into the tee, it sweeps clean that special filter screen. However, the tee also is available in a model without the filter screen, specifically for use on the inlet side of the septic tank. Our new tee baffle also accepts both thin-wall pipe and Schedule 40 four-inch pipe.

Don't be distracted by all the "posturing" and gimmicks out there. Look to Zabel for real solutions to all your onsite wastewater problems, both big and small.



Patent Pending

Warning: Yes this product and the process in which it operates is in the patent process.

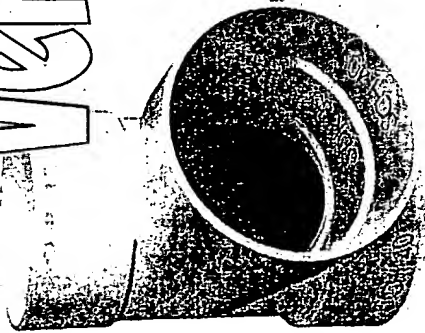
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NEW The only Tee you'll ever need.

Versa-Tee™

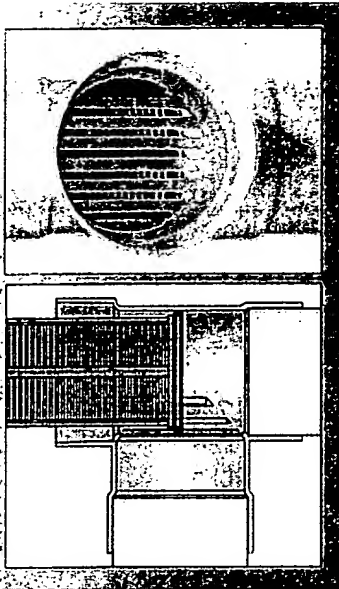
Versatile Design

- outlet accept SDR 35 or SCH 40
- May be purchased alone or with your choice of SDR 35 or SCH 40 extension
- Available with or without Filter Slots



By-Pass Protection

Zabel's new provides by-pass protection during effluent filter servicing, or in the event of accidental filter removal.



1-800-221-5742

Visit our Website www.zabelzone.com

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